

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

CHRISTOPHER JEROME TUCKER	§	
	§	
v.	§	C.A. NO. C-06-41
	§	
UNITED STATES OF AMERICA	§	

**MEMORANDUM AND RECOMMENDATION
TO DISMISS PETITIONER'S HABEAS APPLICATION**

This is a petition for a writ of habeas corpus filed by a prisoner in federal custody pursuant to 28 U.S.C. § 2241. For the reasons stated herein, it is respectfully recommended that the Court dismiss petitioner's application for failure to prosecute his claims.

I. BACKGROUND

On January 17, 2006, petitioner filed his habeas application. (D.E. 1). A notice of deficient pleading was sent to him indicating that he either had to pay the \$5.00 filing fee, or file a motion to proceed in forma pauperis. (D.E. 4). To date, petitioner has neither paid the fee, nor filed a motion to proceed in forma pauperis. The notice of deficient pleading warns petitioner that if he "fails to comply on time, the Court may dismiss this case for want of prosecution."

II. DISCUSSION

An action may be dismissed if the petitioner fails to prosecute it, or to comply with any court order. Fed. R. Civ. P. 41(b); see also Martinez v. Johnson, 104 F.3d 769, 772 (5th Cir. 1997) (holding district courts have the power to sua sponte dismiss a cause of action for failure to prosecute). “The power to invoke this sanction is necessary in order to prevent undue delays in the disposition of pending cases and to avoid congestion in the calendars of the district courts.” Martinez, 104 F.3d at 772 (citation omitted).

It appears that petitioner has both abandoned this lawsuit and failed to comply with orders of this Court. It is therefore respectfully recommended that the Court dismiss petitioner’s application for failure to prosecute his claims.

III. RECOMMENDATION

For the foregoing reasons, it is respectfully recommended that the Court dismiss petitioner’s petition for a writ of habeas corpus for failure to prosecute.

Respectfully submitted this 27th day of February 2006.

A handwritten signature in dark ink, appearing to read "B. Owsley", is written over a horizontal line.

BRIAN L. OWSLEY
UNITED STATES MAGISTRATE JUDGE

NOTICE TO PARTIES

The Clerk will file this Memorandum and Recommendation and transmit a copy to each party or counsel. Within **TEN (10) DAYS** after being served with a copy of the Memorandum and Recommendation, a party may file with the Clerk and serve on the United States Magistrate Judge and all parties, written objections, pursuant to 28 U.S.C. § 636(b)(1)(C); Rule 72(b) of the Federal Rules of Civil Procedure; Rule 8(b) of the Rules Governing § 2254 Cases; and Article IV, General Order No. 02-13, United States District Court for the Southern District of Texas.

A party's failure to file written objections to the proposed findings, conclusions, and recommendation in a magistrate judge's report and recommendation within **TEN (10) DAYS** after being served with a copy shall bar that party, except upon grounds of *plain error*, from attacking on appeal the unobjected-to proposed factual findings and legal conclusions accepted by the district court. Douglass v. United Servs. Auto. Ass'n, 79 F.3d 1415 (5th Cir. 1996) (en banc).